

**REPUBLIC OF NAURU**  
**PUBLIC SERVICE (AMENDMENT) BILL 2016**  
**EXPLANATORY MEMORANDUM**

The *Public Service (Amendment) Bill 2016* is a Bill for the *Public Service (Amendment) Act 2016*.

**EXPLANATION OF CLAUSES**

- Clause 1** provides that, once enacted, the short title of the Bill will be the *Public Service (Amendment) Act 2016*.
- Clause 2** sets out when the Bill's provisions will commence.
- Clause 3** is the enabling provision for the amendment of the *PUBLIC SERVICE ACT 2016*.
- Clause 4** inserts a new section 11A that allows the Minister for Public Service to create Sections within Departments and then to alter the title, transfer and abolish the Section if the Minister sees fit.
- Clause 5** amends section 22 by removing the power of the Minister to make rules and creating a power instead for the Chief Secretary to make policies regarding the advertising of vacant positions. This amendment is made because of the operational elements of the duty which would best be placed with the Chief Secretary.
- Clause 6** amends section 23 by inserting new subsections (4) and (5). The new subsection (4) deals with the oath of office that all public service employees must swear once they are appointed and before taking up such appointment. This provision is an important one as it makes employees affirm their allegiance to the public service.
- The new subsection (5) deals with the appointment of non-Nauruan employees and the requirement that such appointments must be transparent and according to best practices, policies and standards.
- Clause 7** amends section 24 by making a provision specifically stating that all appointments to the public service are to be made only by the Chief Secretary. This provision is inserted to ensure that no other person within the public service, including Secretaries make any appointments without the Chief Secretary having knowledge of, and endorsing such appointments.

This clause is subject to section 13 of the Act which provides for the appointments of heads of departments/ Secretaries to be made by the Cabinet.

- Clause 8** inserts a new Division 2A in Part 5 of the Act. Division 2A deals with vacancies, promotions and the transfers of public service employees within the public service. Within Division 2A there are the following new sections:
- 1.) Section 27A covers promotion where the Chief Secretary may transfer or promote an employee to a position if the position is vacant. If no person within the public service is able to fill that vacant position then the Chief Secretary may consider someone from outside the public service.
  - 2.) Section 27B gives the Chief Secretary the power to transfer an employee to another position after 3 years of service in the same position. The Chief Secretary may consider it in the interest of the public service to transfer the person.
  - 3.) Section 27C allows a public service employee to decline an offer of promotion without prejudicing their right of a future promotion. This includes promotions and transfers under section 27A and 27B.
- Clause 9** deletes section 29(2)(b) which deals with the employment of a temporary employee as a public service employee.
- Clause 10** amends section 36 by inserting a new sub-clause (3) dealing with the conducting of performance assessments by the Chief Secretary. Any such assessment will be conducted by the Chief Secretary in collaboration with the relevant Secretary.
- Clause 11** amends section 44 by omitting the current subsection (2) and substituting with a new subsection (2) dealing with employees not turning up to work for 14 consecutive days and not giving notice as required under the Act. In such cases, the employee is deemed to have resigned and the position held by the employee becomes vacant which allows the Chief Secretary to then advertise for appointment for that vacant position.
- Clause 12** provides a new sub-clause (4) in section 56 and the new clause allows the Chief Secretary to approve up to 3 months medical leave for an employee on full pay if the employee needs to be away from his or her employment due to inpatient hospitalization. Upon the expiration of the 3 months the Chief Secretary may grant leave without pay not exceeding 12 months to allow the

employee time away from his or her employment due to the prolonged hospitalization, illness or injury.

**Clause 13** amends section 77 by inserting a new subclause (6). This new subclause caters for the provision of an allowance to those public service employees who are on leave without pay for the purpose of study. Although these employees may not be paid any other allowance under other provisions of the Act, the Minister may approve that they receive a certain allowance during the period they are on leave without pay for study.

**Clause 14** inserts a new subclause (3) into section 84. The insertion is simply to clarify that the phrase general elections does not include a by-election because by-elections would be covered by the new section 84A.

**Clause 15** is a new section 84A that covers those public service employees who wish to contest by-elections in Nauru. Employees who submit a nomination as a candidate will be granted leave of absence on the day they submit their nomination until the results of the by-election is announced. If the employee is elected a member of parliament then the employee is deemed to have resigned from the public service on the day on which the result of the election is declared.

This clause is important as it provides for the uncertainty that exists around by-elections and when they would be likely to take place.

**Clause 16** is a provision for the re-employment of employees who resigned to contest elections. This provision enables employees to apply for re-employment within the public service if he or she:

(a) resigned in accordance with section 84 of this Act and the resignation takes effect not earlier than 3 months before the date of submission of their nomination as a candidate; and

(b) became a candidate at that election; and

(c) failed to be elected at that election; and

(d) within 2 months of the declaration of the result of that election, applies in writing to the Chief Secretary for re-employment in the public service.

This new clause ensures that even if people have resigned they may come back to the service and knowledge and capacity is not lost simply because they failed to win a seat at elections.

- Clause 17** amends section 94 by omitting the words ‘The Minister’ and substituting with the words ‘The Chief Secretary’. This clause is again one that is operational and best left with the Chief Secretary to deal with.
- Clause 18** makes a minor amendment to section 106 by inserting the numeral ‘2’ after the word Schedule because there has been a new Schedule inserted and the provision needs to harmonise with the rest of the Act.
- Clause 19** deletes subsections (3) and (4) of the section. These subsections are removed because they allow the Secretaries to make declarations regarding the appointment of temporary employees and this power must be removed.
- Clause 20** omits the current Schedule.
- Clause 21** inserts a new Schedule 1 which is the oath of appointment to be sworn by employees of the public service once they are appointment and before they take on their appointment.
- Clause 22** inserts a new Schedule 2. This is the old Schedule simply titled Schedule 2 now to accommodate the new Schedule 1.